

meditated fraud, or at any rate the errors to the prejudice of the plaintiff, charged to exist in the account upon which the settlement is alleged to have been based, entitled the plaintiff to permission to surcharge and falsify it.

With regard to the charge of fraud in fact, which charge in the bill is especially directed against Nathaniel Williams and George Williams, I am altogether convinced that it is destitute of foundation. So far as George Williams is concerned, it is perfectly obvious, if any confidence is to be placed in human testimony, that he was, from the beginning, and continually to the conclusion of this whole transaction, most vehemently opposed to the settlement—the record is so full of evidence on this point, that it is impossible to entertain a doubt upon the subject.

With respect to Nathaniel Williams, though it was chiefly through his agency that the settlement was effected, I do not think a reasonable suspicion can be entertained, but that he honestly believed, whatever the fact may turn out to be, that his brother, the complainant, was indebted to the defendant in at least the sum agreed upon. The bill charges, that when the brothers, George, Cumberland and Nathaniel, were frustrated in their design to secure to themselves the property of the complainant, by procuring him to execute a will, they formed the design to destroy that which they could not obtain, and that having first instigated his creditors to sue him, Nathaniel suggested that he should convey his property in trust to Messrs. Mayer and Burnap. Now, when it is recollected, that Mr. Mayer was the counsel of the complainant, and Mr. Burnap his son-in-law, it appears to me that the advice that they should be appointed his trustees, infers any thing else than a design to take advantage of him. But, without going into details, which would be tedious and unprofitable, I content myself with saying, that upon a careful examination of all the evidence, I do not see a single circumstance upon which, fairly construed, the charge of fraud against Nathaniel Williams can be supported.

I, therefore, dismiss the charge of fraud in fact, which, as it is never to be presumed in any case, certainly should not, in a